Position Sheet on SB 178
Hearing of January 20, 2009
Montana Small Independent Renewable Generators ("MSIRG")
Contact: Suzanne Bessette, sbessette@doneylaw.com, (406) 443-2211.

MSIRG is group of five small-scale wind and hydropower developers with projects in Montana: Hydrodynamics, Inc., Two Dot Wind, LLC, Green Hunter, LLC, Kenfield Wind Park I, LLC, and Turnbull Hydro, LLC. MSIRG's members all own or operate certified Qualifying Facilities (or "QFs") or have proposed QFs waiting to be developed. They are therefore all subject to the protection and rights granted by the federal Public Utilities and Regulatory Policy Act ("PURPA"), which has been incorporated into Montana law, and which is designed to encourage renewable energy development. However, their prospective projects have faced significant resistance from Northwestern Energy. This bill is just another roadblock for renewable generators in Montana. If passed, it will reduce the ability of renewable generators to get project financing and to sell their power.

The following are MSIRG's specific objections and comments on the substantive changes proposed by SB 178.

1. The bill increases time for Public Service Commission ("PSC") determination of rate-setting case from 120 days to 270 days.

• Time is money for QFs as for all other businesses. There is no reason 120 days is not enough time for the PSC to set a contract rate and terms, especially considering there are already no negative consequence for the PSC failing to meet its 120 day deadline.

2. In determining QF contract rates, SB 178 requires the PSC to consider "the value to the utility of the dispatch ability, seasonality, and geographic diversity of the qualifying small power production facility". "Dispatch ability", "seasonality" and "geographic diversity" are all included as new definitions.

• This requirement does not direct the PSC to account for those three features independently, but rather directs the PSC to rely on NWE's valuation and calculation of those features. This takes power away from the PSC to do independent calculations and valuations based on evidence from multiple parties. Federal law requires that the contract rate must not discriminate against QFs and must be just and reasonable. See 18 CFR § 292.304(a). Therefore, this new standard must be rejected.

• The definitions of the three terms are quite vague - they offer no calculus, basis, or source for computing dispatch ability, seasonality, and diversity. If the PSC simply relies on the standards set forth in the federal PURPA regulations for determination of avoided costs (which are already incorporated into the PSC's rules), it has all these concepts already embedded. See 18 CFR 292.304.e. The new standards are a limited subset of the federal standards, and all of them would discriminate against QFs. The federal regulations clarify that all of these factors (line losses, the utility's ability to dispatch the QF power, etc.) are PART of the avoided cost calculation.

• The existing subsection 3 (MCA § 69-3-604(3)) also already contains these concepts. It requires that the PSC must consider "the availability and reliability of the electricity produced," but without the clear bias toward NWE's valuation of these concepts.

3. In determining QF contract rates, SB 178 requires that the contract MUST include "the acquisition of renewable energy credits by the utility, when applicable."

• The utility has no *right* to these credits. If the utility wants to contract with the QF for purchase of these credits, it already has the ability to do so in fair competition with other potential buyers. RECs are a valuable commodity for QFs; indeed their value can mean the difference between obtaining or losing project financing. To force the sale as part of the QF contract would unfairly deprive the QF of its ability to manage, market, and time the sale of this asset. NWE has already agreed that RECs are assets owned by the QF to which NWE has no right or priority. See attached testimony of Mark Stauffer, PSC Docket D2003.7.86, March 30, 2004, at MAS-1.

• RECs should not be included as part of the rate for the contract, because the rate is supposed to be based on costs and avoided costs to the utility. To require the consideration of anything other than avoided costs in setting the rate violates federal law. See 18 CFR 292.304(2).

• The meaning of "when applicable" is entirely ambiguous.

March 30, 2004

Ms. Kate Whitney
Administrator Utility Division
Montana Public Service Commission
1701 Prospect Avenue
P. O. Box 202601
Helena, MT 59620-2601

RE: Docket D2003.7.86
2003 Annual Avoided Cost Compliance Filing

Dear Ms. Whitney:

Enclosed for filing is NorthWestern Energy's (NWE or Company) Supplemental Testimony on the REC additional issue.

If you have any questions please contact Pat Corcoran at (406) 497-2202.

Sincerely,

Nedra Chase

Nedra Chase
Administrative Assistant
Regulatory Affairs

CC: Service List
Enclosure

A. Service List
Docket D2003.7.86

Chris Moore
3001 Broadway St. NE
Suite 695
Minneapolis MN 55413

Michael J. Uda
Doney Crowley Bloomquist
& Uda PC
P O Box 1185
Helena MT 59624-1185

Mr. Dave Healow
Two Dot Wind, LLC
652 Park Lane
Billings MT 59102-1931

Robert Nelson
Montana Consumer Counsel
616 Helena Ave, 3rd Flr
P O Box 201703
Helena MT 59620-1703

Steve Vick
Public Service Commission
1701 Prospect Ave
PO Box 202601
Helena MT 59620-2601

Mr Roger S. Kirk
Hydrodynamics Inc
P O Box 1136
Bozeman MT 59715

Owen Orndorff
YELP/CELP
1087 W River Ste 200
Boise ID 83702-7035

Kevin Woodruff
Henwood Energy Services Inc
2379 Gateway Oakes Dr Ste 2710
Sacramento CA 95833-4231

Department of Public Service Regulation
Montana Public Service Commission
Docket No. 2003.7.86
NorthWestern Energy

Supplemental Testimony on REC Additional Issue
Of Mark A. Stauffer
On Behalf of NorthWestern Energy (NWE)

Q. Are you the same Mark Stauffer that submitted pre-filed testimony in this case?

A. Yes.

Q. What is the purpose of your testimony?

A. My testimony responds to the additional issue of Renewable Energy Credits (RECs), and to the testimony of Mr. Van Jamison regarding this issue.

Q. Please provide an overview of NWE's position on Renewable Energy Credits (RECs).

A. NWE believes that RECs are a separate product from power purchased either in the form of QF contracts at regulated QF rates, or as a result of awarding power purchase contracts subsequent to a Request For Proposals (RFP) process. NWE believes that with proper support, eventually an efficient market for RECs will develop that will provide an incentive for development of renewable energy products. An efficient market would enable willing buyers and willing sellers to determine the appropriate quantities and prices for the exchange of RECs. NWE is a participant in the REC market and will continue to work with REC producers to buy an appropriate quantity of qualified RECs at mutually agreeable prices.

Q. Do you concur with Mr. Jamison's description of RECs?

A. In general yes, however, it should be pointed out that the market for RECs in the Pacific Northwest (region) is in its infancy and how it will develop in the future is uncertain.

Q. What is the significance of that observation?

A. There are two significant considerations related to this. The first is that ongoing support of the development of a marketplace for RECs in the region is needed, and the second is that today's transaction prices are unlikely to be representative of future values. Distribution utilities will likely be the primary market intermediaries between the renewable energy producers and their customers who desire to purchase renewable energy. As such, the utilities need the flexibility to determine the price and quantity their customers are willing to buy, and hence the appropriate price and quantity to buy from producers.

Q. What can be done to encourage the development of an efficient REC marketplace?

A. NWE concurs with Mr. Jamison's recommendation on page VJ-7 that "NWE should be able to choose whether it buys these attributes (RECs) as a bundled power product, "greenpower," or separately as RECs." If NWE and the renewable QF are able to reach mutually agreeable treatment for the RECs, then the transaction should occur. The value of RECs should be determined by willing buyers and willing sellers, essentially in the marketplace.

Q. Later in his testimony (VJ-7) Mr. Jamison states "The higher price "green power" commands in power markets should be reflected in the avoided cost NWE pays to "renewable" QFs only if NWE chooses to buy them as a bundled or "green power" product." Do you agree with this statement?

A. No. The avoided cost for power and the market value of RECs should be kept separate. If NWE buys both the power and RECs from the same project, the avoided cost should not be adjusted, but rather a mutually agreeable value for the RECs should determined. The calculation of avoided cost based power rates should not be encumbered with additional variables.

Q. Why should RECs be traded in a marketplace?

A. There are several reasons. First, PURPA does not require that utilities purchase RECs, which are a separate product from the required power purchase. Second, the marketplace will determine an equilibrium between willing buyers and sellers, thus preventing distortions in supply and demand. Third, it is unclear at this time how many RECs NWE will need or want. The quantity demanded by NWE's customers will be directly affected by what the utility charges for green power products, which is regulated by the PSC. If the utility's E+Green program does not provide the market for the RECs, the broader marketplace will provide NWE with a mechanism to manage the supply and demand of its E+Green program.

Q. Please explain why PURPA does not require purchase of RECs.

A. PURPA requires the utility to purchase power from a QF at a rate that is equal to what the utility would otherwise pay for that power. A particular QF power source may or may not have RECs. Therefore, the avoided cost of power should be unaffected by the additional REC product. The REC is a separate product that is not within the requirements of PURPA.

Q. Mr. Jamison, on VJ-5, states that "NWE is coercing "renewable" QFs in Montana to transfer the "environmental benefits" for their projects without compensation at its avoided costs. Is this true?

A. No. NWE has not suggested that QFs that sign avoided cost contracts are required to transfer their RECs to the utility, and is not proposing such a position in this docket.

Q. How could Mr. Jamison have reached this conclusion?

A. In negotiations with Two Dot Wind, the developer asked NWE how the RECs should be handled, and NWE responded by suggesting language in the QF contract that would give the RECs to NWE. This provision was intended as a catalyst for further negotiations, but NWE received no further response from the developer. Also, in NWE's December 30, 2002 Request for Proposals (RFP) for Wind Generation, in the "Proposal Requirements" section 3.11 (Exhibit MAS_4) the respondent was required to include the environmental attributes in their bid price. However, if the bidder wanted the environmental attributes they could specify the price, and it would be netted from their bid price. Mr. Jamison's client, Navitas, responded to this RFP and was selected as a winning proposal.

Q. If, as NWE asserts, the REC is a separate product from the power product, why did NWE include language in its QF contract and RFP requirements regarding the RECs?

A. It is essential that it be very clear in any business arrangement with a renewable QF, which party will hold the RECs. To not do so simply creates uncertainty in the future. This RFP section essentially causes the

RECs to be put on the table for discussion between a willing buyer and a willing seller and gives the utility a first right to buy them. It in no way seeks to coerce the benefits from the developer. Another way of looking at this section is that it provides the RFP respondent with a mechanism to provide additional value to their project. To developers of a project, the RECs represent additional value for the project. Given the cost of certifying RECs and the uncertainty of their future market value, it may be in the developer's best interests to sell the RECs to the utility in conjunction with the power purchase agreement in order to obtain price certainty. It is quite possible that with a certain value established for the RECs, a project becomes financially feasible. Regarding the language placed in the Two Dot Wind contract, it was in response to the developer's request to address the issue and NWE considers this issue still open to negotiation. If the developer does not wish to further negotiate the disposition of the RECs with NWE, the language will be removed.

Q. If NWE is requiring RFP respondents to bid their RECs to the utility, then isn't Mr. Jamison's criticism correct?

A. No. In the first place, the price paid for the power and the RECs is based on the bid price developed by the respondent. That is, the respondent is not being forced to take a given QF rate. Second, the respondent is free to differentiate the price of power and the price of the REC and essentially retain the RECs at their specified price if they so desire. As stated earlier, NWE agrees with Mr. Jamison's assertion that the QF rate does not include payment for the RECs. The RECs should be considered a separate product and any purchase be based on a bi-lateral agreement between the REC provider and the utility.

Q. Mr. Jamison insinuates that NWE is misrepresenting facts to its customers regarding its present E+Green program, by coercing RECs from its QFs and reselling them to its customers for $20/mwh. Is this true?

A. No. NWE is not presently receiving RECs from its QFs. All of the RECs that NWE is selling are being purchased from the Bonneville Environmental Foundation (BEF). BEF is a non-profit organization that acquires and sells RECs and uses a portion of the proceeds to invest in additional renewable generation in the region, including some small Montana sights. Any incremental revenue that NWE receives above the purchase price of RECs from BEF is applied to the promotion of the green power program. Like QF rates, the rates NWE electric customers pay as voluntary participants in NWE's E+Green program are approved by the MPSC.

Q. Does this conclude your testimony?

A. Yes.

NWEsuptstD2003.7.86

financing (as required) to support the project schedule. Detail in project financing will assist in the financial rating portion of this RFP.

3.8.6 Construction

Describe arrangements and commitments that have been made for the construction of the project.

3.8.7 Testing

Summarize the testing planned prior to acceptance of the turbines from the manufacturer and completion of the project. Possible tests include power performance for the turbines and the project, availability tests, SCADA acceptance, distribution system acceptance, etc.

3.8.8 Commercial Operation

The proposal should clearly describe the anticipated commercial operation data and ongoing operations and maintenance plan for the project, how spares availability will be assured and other operations, maintenance and logistics issues.

3.9 Price Proposal(s)

Complete Tables 1 and 2 in Appendix A to provide the annual price proposal for the proposed terms in 25 mw increments. All prices should be submitted as a variable cost per energy delivered to the Utility under the PPA in U.S. dollars per megawatt-hour. If additional columns are needed, please submit data in a similar, but expanded, format. Both tables – for a 10-year proposal and a 20-year proposal – should be included. All submitted prices should include the reductions resulting from receipt of the federal Production Tax Credits. If proposals are to be included with Additional Services as described in Section 3.7.1 through 3.7.3, tables should be submitted for the proposal without additional services, and for the proposal with each of the combinations of additional services that the bidder wishes to submit. Again, bidders are highly encouraged to bid the Additional Services. The rating system utilized by the Utility to rate each bid will assess the lowest delivered price possible either from i) the bidders net price proposal; or ii) the bidders as delivered price with the Utilities assumed internal cost for such services. Price proposals for transmission services based on Section 3.7.4 should be contained in the detailed description of the transmission offering and should NOT be included in any of the price tables for the project energy output. All price proposals should also be included in Microsoft Excel format on a 3.5-inch disk or on a CD-ROM.

3.10 Proposed Credit Support

Provide a description of the credit support, if required under 2.4, that will be offered to assure performance of the bidder's obligations during the term of the PPA. This may be in the form of Parent Guarantees, Letters of Credit or other forms of security.

3.11 Environmental Attributes

All proposals must state that any and all Environmental Attributes associated with the project will accrue to the sole ownership and beneficial use of the Utility. If bidder would like to purchase the Environmental Attributes back from the Utility, the bidder should specify the price at which they are willing to contract. Restated, if the bidder has a market for some of the Environmental Attributes, the Utility will consider selling back such. This may enhance the bidders rating due to a reduced net price for the supply.